

REMARKS

Applicant requests reconsideration of the application as amended. Claims 1-8 and 10-20 are pending. Claim 9 was previously canceled without prejudice. Claims 19 and 20 are new. Claims 1 and 18 are amended. Support for the subject matter added to claims 1 and 18 is found in the specification *inter alia* at paragraph [0029]. Support for the newly added claims is commensurate with the support for claims 1 and 18.

The Official Action of June 12, 2006 rejected claims 1-2, 5, 8, 10-12 and 17 as anticipated under 35 USC 102(b) by US 2,316,055 to Davey; claims 3-4 as obvious under 35 USC 103(a) over Davey; claims 6-7, 13-14, 16 and 18 as obvious under 35 USC 103(a) over Davey in view of US 6272781 to Resnick; and claim 15 as obvious under 35 USC 103(a) over Davey in view of US 1,227,544 to Lobdell. Applicant respectfully traverses these rejections.

Applicant discloses and claims a ballistic shield formed of a ballistic material with a viewing window, a handle mounted on the shield and a firearm mounted onto the shield. The firearm is mounted via a frame attached to the shield.

Davey discloses a shield formed of a material capable of protecting against projectiles with a viewing window, a handle mounted on the shield and an aperture arranged to receive the front end of a pistol or rifle. Davey does not disclose the use of a frame attached to the shield to mount a firearm to the shield. Davey is devoid of any structure that can facilitate the mounting of weapon onto the shield. Instead, Davey requires that the user expend effort to place and retain the firearm in position in association with the shield. There is no mounting means to hold the firearm in place in association with the shield.

Resnick discloses a garment equipped with emitter that can be a weapon. Resnick does not disclose a shield formed of a material capable of protecting against projectiles with a viewing window, a handle mounted on the shield and an aperture arranged to receive and support the front end of a pistol or rifle. Resnick does not disclose the use of a frame attached to the shield to mount a firearm to the shield. Resnick is devoid of any structure that can facilitate the mounting of weapon onto a shield.

Lobdell discloses a gun sight adapted to engage the barrel of a carbine repeater rifle. Lobdell is devoid of any teaching regarding a ballistic shield formed of a ballistic material with a viewing window, a handle mounted on the shield and a firearm mounted onto the shield. The firearm being mounted via a frame attached to the shield. Lobdell does not disclose the use of a frame attached to the shield to mount a firearm to the shield. Lobdell is devoid of any structure that can facilitate the mounting of weapon onto a shield.

Claims 1-2, 5, 8, 10-12 and 17 were rejected under 35 U.S.C. 102(b) as anticipated by U.S. Pat. No. 2,316,055 (“Davey”). Applicant respectfully traverses.

Applicant has disclosed and claimed a hand-held ballistic shield. Claim 1 has been amended to clarify that the firearm associated with the shield is mounted via a frame for mounting which is attached to the shield. Such amendment is supported by the specification *inter alia* at paragraph [0029]. In contrast, Davey shows an aperture through which only the tip of a firearm can be inserted. Maintaining this insertion requires the user to hold the firearm in position. The Davey aperture does not permit the mounting of a firearm onto the shield.

Davey does not anticipate claim 1 as amended because Davey lacks a frame for mounting the firearm to the shield. The aperture 25 and pads 26 in Davey are provided only for a user to place and hold the tip of a firearm into the aperture for aiming and shooting the firearm. With Applicant’s claimed shield, the user is able to release the weapon and it will still be retained in the firing position by the frame. Davey’s structure does not have such capability. Accordingly, claim 1 patentably distinguishes from Davey and should be allowed. For the same reasons, all claims depending from claim 1 also distinguish from Davey and should be allowed.

Claims 3-4 were rejected under 35 U.S.C. 103(a) as obvious by U.S. Pat. No. 2,316,055 (“Davey”). Applicant respectfully traverses.

In establishing a *prima facie* case of obviousness under 35 U.S.C. 103, the Examiner has the burden of establishing (1) some suggestion or motivation to modify the reference or to combine reference teachings, (2) a reasonable expectation of success, and (3) that the prior art references, when combined, teach or suggest all the claim limitations.¹ "Both the suggestion and the reasonable expectation of success must be found in the prior art, not in the Appellants' disclosure."²

Claim 1 as amended distinguishes from Davey as noted above. Furthermore Davey does not disclose the use the claimed materials for the shield and window. The Examiner has not pointed out or in any other fashion presented evidence to support the asserted modification of the Davey reference. Therefore, Davey cannot be modified to fill the gap of its disclosure. Hence the instant rejection cannot make out a *prima facie* case of obviousness because the cited reference does not disclose all the claimed elements. Therefore, for at least these additional reasons, claim 3-4 distinguish over Davey and should be allowed. Accordingly, Applicant respectfully requests that the rejection be withdraw and the claims allowed to issue.

Claims 6-7, 13-14, 16 and 18 were rejected under 35 U.S.C. 103(a) as obvious by U.S. Pat. No. 2,316,055 ("Davey") in view of U.S. Pat. No. 6,272,781 ("Resnick"). Applicant respectfully traverses.

Claim 1 as amended distinguishes from Davey as noted above. Resnick does not fill the gaps in the disclosure of Davey. Resnick discloses a protective garment for wear by a user. Resnick does not disclose mounting a firearm to a ballistic shield that is dischargeably operable by the user from a face of the shield oriented toward the user. Hence the instant rejections of claims 6-7, 13-14, 16 and 18 cannot make out a *prima facie* case of obviousness because the cited references do not disclose all the claimed elements. Accordingly, Applicant respectfully requests that the rejection be withdrawn.

Claim 15 was rejected under 35 U.S.C. 103(a) as obvious by U.S. Pat. No. 2,316,055 ("Davey") in view of U.S. Pat. No. 1,227,544 ("Lobdell"). Applicant respectfully traverses.

¹ See MPEP §2143 (Aug. 2001).

² *In re Vaeck*, 947 F.2d 488, 493, 20 USPQ2d 1438 (Fed. Cir. 1991).

Claim 1 as amended distinguishes from Davey as noted above. Furthermore, Davey does not disclose the use a mirror in the viewing window. Lobdell does not fill the gap in the disclosures of Davey. Lobdell discloses a gun sight for a firearm designed to correct for blurring due to incorrect focusing by the user. Lobdell does not disclose mounting a firearm to a ballistic shield that is dischargeably operable by the user from a face of the shield oriented toward the user. Hence the instant rejection of claim 15 cannot make out a *prima facie* case of obviousness because the cited references do not disclose all the claimed elements. Accordingly, Applicant respectfully requests that the rejection be withdrawn.

In view of the above amendment, Applicant believes the pending application is in condition for allowance.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 03-2775, under Order No. 12051-00001-US from which the undersigned is authorized to draw.

Dated: September 12, 2006

Respectfully submitted,

By 
Patricia Smink Rogowski
Registration No.: 33,791
CONNOLLY BOVE LODGE & HUTZ LLP
1007 North Orange Street
P.O. Box 2207
Wilmington, Delaware 19899
(302) 658-9141

Attorney for Applicant
486688 1.DOC